

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JAMES G. ABOUREZK; JANE FONDA;
and ROXANNE DUNBAR-ORTIZ,

Plaintiffs,

vs.

PROBUSH.COM, INC., a Pennsylvania
Corporation; MICHAEL MARINO; and
BEN MARINO,

Defendants.

CIV. #03-4146

**DEFENDANTS' ANSWER
AND JURY TRIAL DEMAND**

COME NOW the Defendants, ProBush.com, Michael Marino, and Ben Marino, and do hereby respectfully submit their Answer to the Plaintiffs' First Amended Complaint, and state and allege as follows:

1.

The Plaintiffs' First Amended Complaint fails to state a claim upon which relief can be granted.

2.

The Court lacks subject matter jurisdiction and/or personal jurisdiction over this Defendants.

3.

The Defendants deny each and every matter, allegation, and thing in Plaintiffs' First Amended Complaint except as specifically admitted herein. The Defendants admits Paragraphs 1, 2, 3, 13, 15, and 16. The Defendants further admit that ProBush.com, Inc. owns and operates the ProBush.com website, that Defendants Michael Marino and Ben Marino are the co-owners of

ProBush.com, Inc., and that Senator Abourezk, Jane Fonda, and Roxanne Dunbar-Ortiz, as a public figures who have spoken out publicly on important and controversial issues, were included with more than one hundred other celebrities, politicians, and other public figures on the website's satirical and politically expressive "Traitor List."

4.

As to the remaining facts, allegations, and legal claims set forth in Plaintiffs' First Amended Complaint, these Defendants specifically deny such facts, allegations, and legal claims, and remit the Plaintiffs to strict proof thereof.

5.

As an affirmative defense, the Plaintiffs' claims are barred by the First and Fourteenth Amendments to the United States Constitution, and Article VI, § 5 of the South Dakota Constitution.

6.

As an affirmative defense, the communication in question is not defamatory.

7.

As an affirmative defense, the communication in question does not contain a provably false connotation.

8.

As an affirmative defense, the communication in question cannot reasonably be interpreted as stating actual facts about the Plaintiffs.

9.

As an affirmative defense, the communication in question is constitutionally protected political speech, rhetorical hyperbole, vigorous epithet, and/or parody.

10.

As an affirmative defense, the communication in question was a statement of opinion

relating to matter of public concern.

11.

As an affirmative defense, the communication in question was privileged under the law.

12.

As an affirmative defense, the Plaintiffs are a public figures and intentionally injected themselves into a matter of public importance and public controversy for First Amendment purposes.

13.

As an affirmative defense, the communication in question was not made with actual malice as defined under First Amendment jurisprudence.

14.

As an affirmative defense, the Plaintiffs' claims are completely barred by controlling United States Supreme Court precedent.

15.

As an affirmative defense, the Plaintiffs' claims are barred by state law.

16.

As an affirmative defense, this action is barred pursuant to SDCL 3-21-8, 9 et seq.

17.

The Defendants deny the nature, extent, and amount of damages claimed by the Plaintiffs and remits the Plaintiffs to strict proof thereof.

18.

As an affirmative defense, the Plaintiffs have failed to mitigate any damages.

19.

WHEREFORE, Defendants ProBush.com, Michael Marino, and Ben Marino respectfully pray that Plaintiffs' First Amended Complaint be dismissed with prejudice and that the Plaintiffs

take nothing. Further, the Defendants respectfully move this Honorable Court for an Order permitting it to recover its costs, disbursements, and attorney's fees, and such other and further relief as the Court deems just and proper under the circumstances.

Dated this 13th day of May, 2005.

**JOHNSON, HEIDPRIEM, MINER,
MARLOW & JANKLOW, L.L.P.**

BY /S/ RONALD A. PARSONS, JR.

Ronald A. Parsons, Jr.

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*Attorneys for Defendants ProBush.com, Michael
Marino, and Ben Marino*

DEMAND FOR JURY TRIAL

The Defendants hereby respectfully demands a jury trial on all issues so triable.

/S/ RONALD A. PARSONS, JR.

Ronald A. Parsons, Jr.

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the foregoing **Defendants' Answer and Jury Trial Demand** was served electronically upon the following:

Todd D. Epp
Of Counsel
Abourezk Law Offices, P.C.
P.O. Box 1164
Sioux Falls, SD 57101-1164

Attorneys for the Plaintiff

on this 13th day of May, 2005.

/S/ RONALD A. PARSONS, JR.
Ronald A. Parsons, Jr.

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